

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MB Docket No. 05-249
FM Broadcast Stations.)	RM-10778
(Glenmora and Marksville, Louisiana))	RM-11259
)	
Reclassification of License)	
of FM Station KIOC, Orange, Texas)	File No. BLH-20030303ACM

NOTICE OF PROPOSED RULE MAKING

Adopted: July 27, 2005

Released: July 29, 2005

Comment Date: September 19, 2005

Reply Comment Date: October 4, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it two mutually exclusive Petitions for Rule Making. The first proposal, filed by Charles Crawford (“Crawford”), requests the allotment of Channel 292A at Glenmora, Louisiana, as that community’s first local aural transmission service. To accommodate this allotment, Crawford requests the reclassification of FM Station KIOC, Channel 291C, Orange, Texas, to specify operation on Channel 291C0. The second proposal, filed by Goudeau, Inc. (“Goudeau”) proposes the allotment of Channel 292A at Marksville, Louisiana, as its second local service. Both petitioners stated their intentions to apply for the requested channels, if allotted.

2. Pursuant to the reclassification procedures adopted in the Commission’s *Second Report and Order*¹, FM Station KIOC is subject to reclassification as a C0 facility because the station operates below the minimum Class C standards. In this regard, FM Station KIOC currently operates on Channel 291C with an effective radiated power (“ERP”) of 100 kilowatts at 326 meters height above average terrain (“HAAT”).

3. Consistent with the requirements set forth in Section 73.3573, Note 4, we issued an *Order to Show Cause*² directed to Capstar TX Limited Partnership (“Capstar TX”), licensee of FM Station KIOC, Channel 291C, Orange, Texas, affording it an opportunity to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or to otherwise challenge the proposed action. Capstar TX filed a response stating that it would file the necessary application to implement minimum Class C facilities for FM Station KIOC within 180 days of November 22, 2004, the comment deadline of the *Order*. Capstar TX did not file the necessary application to preserve FM Station KIOC’s Class C status. Therefore, in accordance with the Commission’s reclassification procedures noted above, the license for FM Station KIOC will be reclassified in the context of this proceeding to specify operation on Channel 291C0 instead of Channel 291C at Orange, Texas.

¹ See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules, 15 FCC Rcd 21649 (2000) (“*Second Report and Order*”) see also 47 C.F.R. §§ 1.420(g), note 2 and 73.3573, note 4.

² See *Reclassification of License of FM Station KIOC, Orange, Texas*, 19 FCC Rcd 19486 (MB 2004) (“*Order*”).

4. Crawford requests the allotment of Channel 292A at Glenmora, Louisiana, as the community's first local service.³ Goudeau proposes the allotment of Channel 292A at Marksville, Louisiana, as the community's second local service. We find that both proposals warrant consideration because the proposed allotments could provide Glenmora with a first local service and Marksville with a second local service. However, both proposals cannot be accommodated in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules. The proposals are located 53 kilometers apart whereas the minimum distance separation requirement is 115 kilometers. As such, we shall provide each proponent an opportunity to demonstrate in its comments why its community should receive the requested allotment. In this regard, the parties should be guided by the allotment criteria for FM allotment priorities.⁴ Additionally, the proponents may wish to determine if other channels may be available to resolve the existing conflict.

5. A staff engineering analysis has determined that the reclassification of FM Station KIOC to specify operation on Channel 291C0 at Orange, Texas will eliminate any short spacing to the proposed Channel 292A at Glenmora, Louisiana. As a result, Channel 292A can be allotted to Glenmora, in conformity with the Commission's rules, provided there is a site restriction of 12.2 kilometers (7.6 miles) west at reference coordinates 31-00-35 NL and 92-42-30 WL. Alternatively, Channel 292A can be allotted to Marksville, Louisiana, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules, provided there is a site restriction of 9.7 kilometers (6 miles) west at reference coordinates 31-06-34 NL and 92-09-55 WL.

6. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

		<u>Channel No.</u>
<u>City</u>	<u>Present</u>	<u>Proposed</u>
<u>Option 1</u>		
Glenmora, Louisiana	-----	292A
Orange, Texas	283C1, 291C	283C1, 291C0
<u>Option 2</u>		
Marksville, Louisiana	249A	249A, 292A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before , 2005, and reply comments on or before , 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445

³ Glenmora is an incorporated town with a 2000 U.S. Census population of 1,558 persons. In support of its proposal, Crawford states that Glenmora has its own mayor, city offices, post office, schools, volunteer fire department, police department and a number of local churches.

⁴ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Counterproposal filed in this proceeding need only protect FM Station KIOC, Orange, Texas, as a Class C0 allotment. Additionally, a copy of such comments should be served on Petitioner or its counsel, as follows:

Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

George L. Lyon, Jr. Esq.
Counsel for Goudeau, Inc.
Lukas, Nace, Gutierrez & Sachs, Chartered
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8. Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁵ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

10. For further information concerning a proceeding listed above, contact Rolanda F. Smith, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be

⁵ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C. F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.